

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEITH HOLDER,

No. C 08-2572 CW (PR)

Petitioner,

v.

ORDER APPOINTING COUNSEL

BEN CURRY, Warden,

Respondent.

This is a habeas action under 28 U.S.C. § 2254 filed by pro se Petitioner Keith Holder challenging the October 26, 2006 decision of the California Board of Parole Hearings (BPH) to deny him parole. In an order filed on August 6, 2010, the Court granted Petitioner relief and directed the BPH to set a parole date for Petitioner unless it found new evidence, arising after the 2006 hearing, of current dangerousness. Doc. No. 9.

On August 27, 2010, Respondent filed a notice of appeal and an application for a stay of the Court's Order and Judgment pending appeal or, alternatively, a temporary stay of the Order and Judgment to allow Respondent time to seek a stay in the Ninth Circuit. Doc.

1 No. 11.

2 On September 3, 2010, the Court granted in part and denied in
3 part Respondent's application for a stay. The Court denied the
4 request for a stay pending appeal, but temporarily stayed the
5 Court's August 6, 2010 Order and Judgment to permit Respondent time
6 to seek a stay in the Ninth Circuit. Doc. No. 15. That same day,
7 Respondent filed a motion to stay proceedings in the Ninth Circuit;
8 that Court also set a briefing schedule. See Holder v. Curry, No.
9 10-16904 (9th Cir. 2010), Doc. Nos. 1 & 2.

10 On September 14, 2010, a letter filed with the Court from
11 Petitioner indicated that the BPH held another parole suitability
12 hearing on September 7, 2010 at which time the BPH found Petitioner
13 suitable for parole and that Petitioner was scheduled for release on
14 September 9, 2010. See Holder v. Curry, No. C-08-2572 CW (PR) (N.D.
15 Cal. filed May 21, 2008), Doc. No. 17. Nonetheless, Petitioner
16 remains in prison. See Holder v. Curry, No. 10-16904 (9th Cir.
17 2010), Doc. No. 3.

18 Although the Sixth Amendment right to counsel does not apply in
19 habeas corpus actions, see Knaubert v. Goldsmith, 791 F.2d 722, 728
20 (9th Cir. 1986), 18 U.S.C. § 3006A(a)(2)(B) authorizes a district
21 court to appoint counsel to represent a habeas petitioner whenever
22 "the court determines that the interests of justice so
23 require" Such is the case here.

24 Good cause appearing, the Court hereby sua sponte APPOINTS
25 COUNSEL to represent Petitioner. The matter is REFERRED to the
26 Federal Public Defender to find representation for Petitioner.

1 The Clerk of the Court is directed to provide a copy of this
2 Order to the Office of the Federal Public Defender. Upon being
3 notified by the Office of the Federal Public Defender that an
4 attorney has been located to represent Petitioner, the Court will
5 appoint that attorney as counsel for Petitioner.

6
7 IT IS SO ORDERED.

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9 Dated: 10/18/2010

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11 CLAUDIA WILKEN
12 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KEITH HOLDER,

Plaintiff,

v.

BEN CURRY et al,

Defendant.

Case Number: CV08-02572 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 18, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Keith Holder
E87291
Correctional Training Facility
P.O. Box 689, YW-222-L
Soledad, CA 93960

Office of the Federal Public Defender
450 Golden gate Avenue
Room 19-6884, Box 36106
San Francisco, CA 94102

Dated: October 18, 2010

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk